



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/842,833

04/27/2001

James J. Barry

12013/58401

8482

26646

7590

10/16/2008

KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

STEWART, ALVIN J

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

10/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/842,833
Filing Date: April 27, 2001
Appellant(s): BARRY ET AL.

Jocelyn D. Ram
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/31/08 appealing from the Office action mailed 07/27/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,950,227	Savin et al	8-1990
6,287,285 B1	Michal et al	09-2001
5,902,631	Wang et al	05-1999

Art Unit: 3774

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 7, 11 and 24-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savin et al US Patent 4,950,227 in view of Michal et al US Patent 6,287,285 B1.

Savin et al discloses a coated implant delivery system comprising an implant delivery device (10) with a first end (14), a second end (proximal portion of catheter), an inner lumen (lumen within the balloon used to expand balloon) and a stent (16). The first end has a releasable implant retention region (14), the region has an accessible surface (surface of the balloon), and the accessible surface has a first implant adhesion-resistant coating (see col. 4, lines 55-57). The releasable implant retention region has two coaxial sleeves (18 & 20).

Regarding claims 3 & 11, see Fig. 2.

However, Savin et al, does not disclose a stent having a first implant coating.

Michal et al teaches a stent having a coating for the purpose of delivering therapeutic and pharmaceutical agents to a targeted area (see Figs. 10-12; and col. 12, lines 23-29; col. 12, lines 59-67; col. 13, lines 1-16; col. 4, lines 10-22).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the stent of the Savin et al reference to add a therapeutic coating of the

Art Unit: 3774

Michal et al reference in order to deliver therapeutic and pharmaceutical agents to a targeted area to inhibit or prevent restenosis.

Claims 5, 6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Savin et al US Patent 4,950,227 in view of Michal et al US Patent 6,287,285 B1 and in further view of Wang et al US Patent 5,902,631.

Savin et al as modify by Michal et al disclose the invention substantially as claimed. However, Savin et al as modify by Michal et al do not disclose an exterior of the second end of the implant delivery device treated with a second adhesion-resistant coating, a second adhesion-resistant coating on the accessible surface and a non-adhesive coating made of hydrogel, carbowax or PEO.

Wang et al teaches a medical device having a plurality of lubricious coatings for the purpose of having different lubricity gradients along a specific area for the purpose of targeting specific problems, such as, a voiding the so-called “watermelon seed” problem wherein a balloon which is too lubricious shoots forward on inflation (see col. 3, lines 40-60; col. 2, lines 1-10; and col. 1, lines 28-32).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the type of lubricants of the Savin et al reference as modify by the Michal et al reference with the different lubricants and the different coating of the Wang et al reference in order to target specific problems, such as, a voiding the so-called “watermelon seed” problem wherein a balloon which is too lubricious shoots forward on inflation.

Regarding claims 6 & 8-10, see col. 4, lines 39-61.

(10) Response to Argument

Applicant's arguments filed 07/31/08 have been fully considered but they are not persuasive.

The Applicant's representative discloses that the three references used to reject the claims are improperly applied. For example, the Applicant's representative discloses that Savin does not disclose an implant adhesion-resistant treatment on the accessible surface of the delivery device because the resistant coating is located between the implant and the delivery device and does not disclose a releasable implant having an implant coating on the surface in contact with the accessible surface.

The Examiner partially agrees with the Applicant's representative point of view with respect to the implant missing a coating. Savin does not disclose a stent having a coating. However, the Examiner disagrees with the Applicant's representative point of view with respect to the adhesion-resistant treatment on the accessible surface of the delivery device.

The Applicant's representative discloses that supposedly Savin does not teach an adhesion resistant coating that is located between the implant and the delivery device because Savin "only" discloses a lubricating solution that can be provided between the balloon and the sleeves.

The Examiner interpretation of col. 4, lines 55-57 is the following: if a lubrication solution is disposed between the balloon 14 and the sleeves 18 and 20 to aid in releasing the stent from the sleeves, then the solution is touching the inner surface of the sleeves 18 & 20 and the outer surface of the balloon 14. Nowhere in the specification disclose that the solution is applied over the inner surface of the sleeves but clearly disclose that the solution is between the sleeves

Art Unit: 3774

and the balloon, therefore, the solution has to be between the balloon and the stent and the sleeves and the stent.

These types of coatings are well known in the art so they can easily release the stent into the patient's blood vessel.

In order to confirm the statement above, the Examiner wants to point out one embodiment of a plurality of embodiments on the Michal et al reference. The embodiment shown in Figures 1-4 clearly disclose a delivery system having a balloon catheter completely coated with a hydrophilic coating for the purpose of providing lubricity. Additionally, Michal et al discloses another embodiment disclosing a stent capable of being coated with a hydrophilic material or a therapeutic agent.

Regarding the Michal et al reference, the Applicant's representative believes that the Examiner combination with the Savin reference is not proper and the "Examiner can not simply pick and choose between embodiments of a reference...."

The Examiner believes that the combination of the references are proper because the Examiner wants to only show that all the structure limitations entered on the claims are well known. The Examiner is only showing two patents ('227 & '285) disclosing most of the structural limitations, that can be show in a plurality of different patents. For example, Savin discloses a delivery system, a balloon, a stent and an adhesion-resistant surface. Michal, as mentioned by the Applicant's representative, discloses a first embodiment disclosing a delivery system having an adhesion resistant coating and a second embodiment disclosing a delivery system having a stent coated with a therapeutic agent. The Examiner used the second embodiment to show that it is well known in the art to combine these two references together.

Art Unit: 3774

Additionally, the examiner wants to point out that the first embodiment of the Michal reference can also be combined with the coated stent embodiment of the Michal et al reference because all those structure limitations are well known by an ordinary skill in the art.

Therefore, as mentioned above, the Examiner believes that the rejections are proper and have sufficient motivation to combine the references and different embodiments together.

It would have been obvious to modify the Savin et al reference with the coated stent of one of the embodiments of the Michal et al reference in order to clearly disclose that it is well known in the art to supply stents with therapeutic layers in order to treat a target area in the blood vessel.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Exr. Alvin Stewart

/Alvin J Stewart/

Primary Examiner, Art Unit 3774

Art Unit: 3774

Conferees:

Corrine McDermott

Thomas Barrett

/Corrine M McDermott/

/Thomas Barrett/

Supervisory Patent Examiner, Art Unit 3738

TQAS TC3700